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Letter dated 18 March 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to convey the attached report dated 5 March 2009, which I received from my Special Adviser on the Prevention of Genocide, Francis Deng, on his mission to the Great Lakes region with respect to the situation in the Democratic Republic of the Congo. This is pursuant to Security Council resolution 1366 (2001), in which the Council invited the Secretary-General to refer to the Council information and analyses from within the United Nations system on cases of serious violations of international law, including international humanitarian law and human rights law, and to the letter dated 12 July 2004 (S/2004/567) in which the previous Secretary-General informed the President of the Council of his decision to appoint a Special Adviser on the Prevention of Genocide.

I should be grateful if you would bring the present letter and report to the attention of the members of the Security Council.

(*Signed*) **Ban** Ki-moon

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Report of the Special Adviser of the Secretary-General on the Prevention of Genocide on his mission to the Great Lakes region from 22 November to 5 December 2008 with respect to the situation in North Kivu

5 March 2009

Summary

The root causes of the current conflict in the eastern part of the Democratic Republic of the Congo are primarily political and economic and not related to identity. However, extreme ethnic polarization and hatred have become associated with that conflict.

The Special Adviser believes that the risk of ethnic targeting in North Kivu is significantly pronounced above other underlying potential causes of genocide. References to genocide having occurred in the past or allegedly going on at present are powerfully used to predict that genocide may occur again in the future, in particular against the Tutsi, who are popularly viewed as the principal perpetrators of mass atrocities. The likelihood of ethnically motivated killings by armed groups and the escalation of genocidal hysteria among the civilian populations are factors that must be addressed in earnest. The regional dimensions of such a prospect must also be taken into account.

While the information gathered and analysed for the purposes of this report is unlikely to bring radically new insights into the United Nations system's understanding of the situation in the Democratic Republic of the Congo, the Special Adviser hopes it can bring an immediate stimulus for action. The Special Adviser notes that the vocation of his own mandate does not lie so much in identifying new solutions, but in using it as an "alarm" function to help generate momentum for preventive responses by the United Nations system's operational entities. The Special Adviser acts on the premise that the responsibility of preventing genocide and related atrocities lies with the United Nations system as a whole, including the Security Council and the Secretariat.

Since the mission late in 2008, there have been dramatic developments in the Democratic Republic of the Congo, primarily, as at 5 March 2009, the concerted action by the armed forces of the Democratic Republic of the Congo and Rwanda to rein in the Forces démocratiques de liberation du Rwanda and to integrate the Congrès national pour la défense du peuple into the army of the Democratic Republic of the Congo, following the ousting of its leader, Laurent Nkunda. Some of the possible implications of these developments have been presented in this report and may be relevant beyond North Kivu.

The recommendations contained in the report centre on emphasizing the need to enhance protection of the civilian populations; shifting the focus from military action to political engagement and the search for peaceful solutions; building the capacity of the Government of the Democratic Republic of the Congo for effective democratic governance and the rule of law, with justice for all groups; fostering inter-ethnic reconciliation; encouraging regional cooperation; and continuing the cooperation between the African Union and the United Nations in supporting the Democratic Republic of the Congo and the regional initiatives.

I. Introduction

1. The Special Adviser of the Secretary-General on the Prevention of Genocide is mandated to "collect existing information, in particular from within the United Nations system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide" (see S/2004/567, annex).

2. It is important that this mandate be understood as specific and focused on the prevention of genocide. Nevertheless, since the precursors of genocide are varied and broader than the legal definition of the crime of genocide, prevention entails also a broader approach. Furthermore, the term "genocide" is often employed in a broader sense, evoking emotive and political responses that need to be taken into account. The Special Adviser seeks to clearly discern the relevance of his mandate to any given situation, by consulting widely with those already engaged and by forging a collaborative and complementary approach, based on the prospect of the mandate adding value to the work of other actors.

3. It is in this context that the Special Adviser has been monitoring the situation in the Democratic Republic of the Congo since early 2008, undertook a mission in the region at the end of 2008 and is presenting the present report, which contains his findings and a number of specific recommendations.

II. The mission

4. In response to reports of allegedly ethnic-based violence in the Democratic Republic of the Congo, the Office of the Special Adviser began to monitor the situation from January 2008 by collecting up-to-date information from within the United Nations system, non-governmental organizations and other sources.

5. While acknowledging that there are several provinces in the Democratic Republic of the Congo that could be of concern to him, the Special Adviser decided to conduct a mission and focus his analysis on the situation in North Kivu in view of the dramatic deterioration of the situation there starting in October 2008. He and his staff held consultations with the Department of Peacekeeping Operations, the Department of Political Affairs, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office for the Coordination of Humanitarian Affairs at the headquarters level. During the month of November 2008, the Special Adviser met with the Permanent Representatives of Burundi, the Democratic Republic of the Congo, Rwanda and Uganda to discuss the situation and his proposed mission. All of the Special Adviser's interlocutors expressed support for his mission and undertook to facilitate it.

6. The mission was organized with the support of the Special Representative of the Secretary-General and Deputy Special Representative of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), Alan Doss and Leila Zerrougui respectively, the United Nations Resident Coordinators in Rwanda and Uganda, Aurelien Agbenonci and Theophane Nikyema respectively, and the Special Representative of the Secretary-General of the United Nations Integrated Office in Burundi (BINUB), Youssef Mahamoud. The Special Adviser would like to express his deep gratitude to all of them.

7. Travelling with two staff members, the Special Adviser arrived in Kampala on 24 November, where he met with the Minister of State for Foreign Affairs and Regional Cooperation, Isaac Isanga Musumba, the Minister for Relief, Disaster Preparedness and Refugees, Tarsis Bazana Kabwegyere, the United Nations Resident Coordinator, other United Nations officials and the head of the MONUC liaison office in Kampala.

8. With regard to Burundi, the Special Adviser decided not to proceed to Bujumbura, as the Government authorities were in the end not available to meet with him. He decided, however, to dispatch his staff there, where they met with representatives of civil society and with United Nations officials.

9. On 26 November, the Special Adviser arrived in Kigali, where he met with the United Nations Resident Coordinator. On 27 November, he met with the Prime Minister, Bernard Makuza, the Minister for Foreign Affairs, Rosemary Museminali, the then Special Envoy of Rwanda for the Great Lakes region, Joseph Mutaboba, the Executive Secretary of the Gacaca Court, Domitilla Mukantaganwa, the Executive Secretary of the Commission nationale de lutte contre le genocide, Jean de Dieu Mucyo, and representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR).

10. On 28 November, the Special Adviser travelled to Kinshasa and met with the Minister for Foreign Affairs, Alexis Thambwe, the Special Envoy of the Secretary-General for the Great Lakes Region and former President of Nigeria, Olusegun Obasanjo, the MONUC Deputy Special Representative of the Secretary-General and staff of the Human Rights Division of MONUC. From 29 November to 2 December, the Special Adviser visited Goma, where he held meetings with the Governor and Vice-Governor of North Kivu, the commander of the eighth military region of the Armed Forces of the Democratic Republic of the Congo, the then leader of the Congrès national pour la défense du peuple (CNDP) Laurent Nkunda, the North Kivu spokesman of the Forces démocratiques de liberation du Rwanda (FDLR), civil society representatives, representatives of different ethnic communities, victims of mass atrocities, representatives of international non-governmental organizations and United Nations officials. The Special Adviser returned to Kinshasa and met with the Minister for Human Rights, Upio Kakura Wapol, two members of the Senate and representatives of civil society and the Catholic Church. The Special Adviser thanks all his interlocutors for their openness and willingness to share their concerns and views on the situation in North Kivu.

11. Since the mission, dramatic developments have taken place in the Democratic Republic of the Congo, which, as at 5 March 2009, consisted primarily of the concerted action by the armed forces of the Democratic Republic of the Congo and Rwanda to rein in FDLR and to integrate CNDP into the army of the Democratic Republic of the Congo. Some of the possible implications of these developments have been presented in the report.

III. Background

12. An analysis of the root causes of the current crisis in North Kivu is beyond the scope of this report.[1] Three issues are worth mentioning, however, as they provide

[1] See Mwesiga Baregu in the list of references.

significant insights into the Special Adviser's understanding of the situation: firstly, the weakness of the State in the Democratic Republic of the Congo, caused by the vastness of its territory and the 30-year rule of former President Mobutu, which resulted in high levels of corruption and the neglect of the country's infrastructure and Government functions; secondly, the interests and involvement of most of the Democratic Republic of the Congo's neighbours and other powers from further afar; and thirdly, the 1994 genocide in Rwanda, which changed dramatically the political, security and economic dynamics in the Great Lakes region and contributed to a series of wars in the Democratic Republic of the Congo itself.

IV. Methodology

13. In analysing any situation from the perspective of his mandate, the Special Adviser takes into account the following factors:

(a) The existence of a national, ethnic, racial or religious group at risk;

(b) A history or a pattern of violence, discrimination and biases against a group;

(c) Circumstances that negatively affect domestic capacity to prevent genocide;

(d) The existence of armed elements that draw their membership from a specific group;

(e) The existence of a political or economic motivation for leading actors in the State or in the region to encourage divisions between national, racial, ethnic or religious groups;

(f) The occurrence of human rights violations that are possible elements of the crime of genocide;

(g) Whether there is a reason to believe that there exists "intent to destroy in whole or in part" an ethnic, racial, national or religious group;

(h) Moments of vulnerability that may aggravate conditions or spark deterioration in the situation.

14. These eight categories constitute a framework of analysis which has been derived through wide consultations within the United Nations system and in cooperation with scholars, researchers and members of civil society. This framework was used to analyse the situation in North Kivu.

V. Analysis of the situation in North Kivu

A. Existence of national or ethnic groups at risk

15. The Kivu region of the eastern Democratic Republic of the Congo is populated by an estimated 70 ethnic groups. In addition, the region continues to host a number of Rwandan refugees of Hutu ethnic origin, who left Rwanda following the 1994 genocide.

16. The region is very volatile and its entire civilian population is vulnerable and constantly exposed to the conflicts between the various armed groups (referred to later in this report).

17. Nevertheless, as has been documented by researchers and human rights experts over the past several years (see list of references), one ethnic group, the Tutsi, is singled out for different treatment. The popular perception that CNDP drew its strength primarily from the Tutsi community, with the support of Rwanda, and the fact that the group had committed serious atrocities against the civilian population in North Kivu (such as in Kiwanja in November 2008), mostly against members of other ethnic groups (amounting in the eyes of many members of these groups to "genocide"), has exacerbated anti-Tutsi feelings and has contributed to the increasing risk of ethnic-based retaliatory violence that Tutsi groups now face.

18. The exposure and singling out of the Tutsi became very clear to the Special Adviser during a meeting with representatives of local civil society in Goma, where representatives of the Hunde, Nande, Nyanga, Hutu and Twa all expressed similar feelings, giving the impression that an alliance against the Tutsi has been emerging. Genocidal violence of a retaliatory nature was considered a possibility by victims and public officials alike, and while in some instances these threats and the emotions behind them were clearly overplayed, an anti-Tutsi bias was overwhelmingly evident. Recent developments do not necessarily change the situation, but might indeed encourage the perception that the Tutsi, and Rwanda, are enhancing their military position in the area, which could be a potential source of more tension.

19. At the same time, there are concerns that the Hutu civilians may now be more at risk, as military efforts to disarm the Hutu militias expand. Existing hostilities against "Rwandans" generally, including the Hutu refugees, could easily turn into anti-Hutu sentiments and be manipulated in the current shifting of alliances. Joint military operations by the Armed Forces of the Democratic Republic of the Congo, CNDP and the Rwandan Defence Force could easily fail to make appropriate distinctions between Hutu civilians and FDLR.

B. Ethnic-based discrimination and other human rights violations

20. The Democratic Republic of the Congo has a long history of massive human rights violations, in North Kivu and elsewhere, perpetrated by Government officials and various armed groups, including foreign armed groups and the national army. However, from the perspective of the mandate of the Special Adviser, the role that ethnicity has historically played in the commission of human rights violations is particularly significant. The Special Adviser consulted relevant available information prior to his mission (see list of references) in order to ascertain the ethnic factor in the conflicts.

21. The 1994 genocide in Rwanda destabilized the Democratic Republic of the Congo dramatically. One million Rwandan Hutu refugees poured into the eastern part of the country, including many individuals directly implicated in the genocide (the so-called *genocidaires*) as well as Hutu militias (the Interahamwe) and the remainder of Rwanda's armed forces. Using the refugee camps as military bases, these groups would attack Rwanda, whose Government was then led by the Tutsi-dominated Rwanda Patriotic Front. Members of the local Hutu community and other

ethnic communities supported these attacks.[2] The threat to Rwanda posed by Hutu militias as well as attacks against the local Tutsi population were used by Rwanda as a justification to invade the Democratic Republic of the Congo in 1996. During the invasion, massacres of the Hutu refugees and Congolese civilians took place.

22. Since 1996, the Democratic Republic of the Congo has been the battleground for wars in which as many as nine African countries were at times involved. These wars resulted in one of the most devastating humanitarian and human rights disasters, with millions of deaths from killings, famine and disease and many more millions of internally displaced persons.

23. Specifically with regard to the situation in the eastern Democratic Republic of the Congo, human rights experts, such as the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, researchers and non-governmental organizations, have in the past pointed to the increasing marginalization and stigmatization of the Tutsi community, which was already evident during Mobutu's reign but has been exacerbated in the course of the wars since 1996.[3] As has been observed by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee, those who originated from Rwanda and settled in the Democratic Republic of the Congo have faced difficulties in acquiring Congolese citizenship, although they fulfil the requirements of the 2004 nationality law. It is worth re-emphasizing that atrocities committed by Tutsi-led armed groups since then, and the rumours circulating about them, have contributed to this situation.

C. Circumstances that negatively affect domestic capacity to prevent genocide

24. As noted in various assessments, including by the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, following his mission to the Democratic Republic of the Congo in April 2007, the judicial system is in an alarming state resulting in widespread impunity and a licence to kill. Among other problems, judges and prosecutors are few and inadequately paid, encouraging corruption and lack of independence, and the infrastructure necessary for them to work is insufficient; interference by the executive authorities and the army in the administration of justice remains very common; and gaining access to justice is very difficult for the majority of the population because of corruption, lack of financial resources and the geographical remoteness of courts. In addition, military courts often hear cases of violations perpetrated on civilians; this is very problematic considering the particularly prevalent lack of independence of the military judicial system, pressure and interference by the military hierarchy and corruption.

25. Failure to hold individuals or Government officials accountable for human rights and humanitarian law violations is fuelling the current violence and entrenching a climate of impunity, exposing the Government's inability to bring perpetrators to justice and prompting OHCHR to establish a justice mapping project (supported by MONUC and the United Nations Development Programme), in order

[2] The information in this section is drawn largely from *Weiss and Carayannis* (see list references).

[3] Other vulnerable communities include the Twa and other forest-dependent peoples in the Democratic Republic of the Congo, but these fall outside the scope of the present report.

to record the most serious violations committed in the Democratic Republic of the Congo between March 1993 and June 2003, and to identify their victims and perpetrators.[4]

26. United Nations military support for the Government through MONUC, while significant in providing protection for civilians, does not substitute for the Government and MONUC is not in a position to engage in counter-insurgency warfare against armed groups. As the MONUC Force Commander explained to the Special Adviser, such a mission would need an "expeditionary" force, which would require a much larger force than the one currently authorized by the Security Council.

27. Furthermore, the international community's resources to continue to offer protection and assistance to victims of violations in the region, including refugees and internally displaced persons, are overstretched and are increasingly obstructed by the volatile security situation on the ground.

28. In addition, the State does not exercise effective control over the entirety of its territory and it is particularly weak in the eastern part of the country, leaving a vacuum in law and order and depriving population groups and individuals of the structures necessary for protection from potential genocide and related human rights violations.

D. Existence of armed elements that draw their membership from ethnic groups

29. The eastern Democratic Republic of the Congo has witnessed the emergence of multiple armed groups, often supported by the Government of the Democratic Republic of the Congo or other Governments. At various moments in the past 10 years, some of these groups have opposed the Armed Forces of the Democratic Republic of the Congo, but some have fought alongside those forces and against each other. Alliances have shifted and the groups themselves have changed names and composition. Some armed elements are widely associated with certain ethnic groups because they recruit principally from a particular ethnic community and because they may claim to protect that ethnic community. For example, FDLR is recognized as recruiting from the Rwandan refugee community, which is predominantly Hutu, while CNDP is thought to have recruited largely from Tutsi communities. Nevertheless, an exclusively ethnic analysis of armed actors and their activities would obscure the nuances of their membership and objectives. The involvement of neighbouring Governments, as documented, for instance, in the recent report of the Group of Experts on the Democratic Republic of the Congo, covering its monitoring the United Nations arms embargo on the Democratic Republic of the Congo,[5] further complicates the analysis.

30. As concerns the Armed Forces of the Democratic Republic of the Congo, at the time of the visit of the Special Adviser the general impression was that they were a very weak, almost negligible force in military terms, which had been unable to disarm FDLR and secure the territory. At the same time, elements of the Armed

[4] The project will also assess the capacity of the national justice system to deal with these violations and to make recommendations as regards options for transitional justice.

[5] Final report of the Group of Experts on the Democratic Republic of the Congo (S/2008/773).

Forces, acting with impunity, have been implicated in serious human rights and humanitarian law violations against all ethnic groups, including rapes, killings, extortions, the use of internally displaced persons as human shields and illegal exploitation of resources.

31. The armed groups active in North Kivu at the time of the mission were CNDP, FDLR and the Mayi-Mayi.

Congrès national pour la défense du peuple

32. CNDP, then led by dissident commander General Laurent Nkunda, was until recently the most powerful armed group in the eastern Democratic Republic of the Congo. It was composed of Tutsi as well as members of other ethnic groups. Nevertheless, the Tutsi were believed to occupy the highest commanding ranks of the armed movement. Its strength was reportedly between 4,000 and 7,000 men. The movement was believed to draw political and financial support from the Congolese and Rwandan diaspora in various African and non-African countries.[5] After the completion of the mission of the Special Adviser, rifts were reported to exist among the leadership of CNDP, in particular between Nkunda and his chief of staff, Bosco Ntaganda. As of late January 2009, Nkunda was confined in Rwanda, while some elements of CNDP were integrating into the Armed Forces of the Democratic Republic of the Congo and Ntaganda was reportedly cooperating with the Armed Forces in military operations. Ntaganda has been indicted by the International Criminal Court for the illegal recruitment of children.

33. Nkunda has been accused of committing atrocities in Kisangani in 2002 as well as in Bukavu in 2004, although he denies the accusations. The Democratic Republic of the Congo transitional Government had issued an international arrest warrant against him. He has also been accused of forced recruitment of children in the Masisi and Rutshuru territories of North Kivu, apparently in order to replenish his military strength after some of his units had agreed to join the Armed Forces integration (*brassage*) programme in 2003. CNDP has been implicated by United Nations sources in massive violations of human rights and humanitarian law in the eastern Democratic Republic of the Congo (for instance in the massacres in Kalonge and Bukombo and, in November 2008, in Kiwanja).

34. Although originally the disarmament and removal of FDLR from the Kivus and the protection of the Tutsi was CNDP's reported top priority, its agenda has been an evolving one. From professing to be the protector of the Tutsi in North Kivu, Nkunda later assumed the role of protector of all minorities in the Democratic Republic of the Congo. He then claimed to be fighting against bad governance in Kinshasa and, more recently, launched a campaign against the mining contracts signed by President Kabila with China without the approval of the mandated Government organs. Nkunda linked the ineffectiveness of the Government to all other problems, including the failed disarmament of FDLR, the alleged protection extended by the Government to FDLR and other non-State actors, the oppression of minorities and the mining contracts with China.

Forces démocratiques de liberation du Rwanda

35. The strength of FDLR at the time of the mission of the Special Adviser was reportedly between 6,000 and 7,000 men. The movement controls and illegally

exploits various mines in North Kivu and uses the revenues to purchase weapons and finance military training.

36. The Special Adviser met with the North Kivu FDLR spokesperson in Nyiragongo. During the meeting, the spokesperson recalled that the movement was formed in 2000 in response to the threat of extermination of the Hutu posed by the Rwandan attacks against the refugee camps in 1996 and that the main purpose of the group remained the protection of the Hutu against both the Rwandan and the Democratic Republic of the Congo Governments. He also identified MONUC as a threat to the survival of the movement and, thus, of its people, due to its disarmament, demobilization and reintegration mandate. During the meeting, the FDLR spokesperson denied any collaboration of FDLR with the Armed Forces of the Democratic Republic of the Congo against CNDP. He also stressed that ethnic reconciliation in Rwanda would be possible only if the alleged atrocities committed by Rwanda against the Hutu civilians was recognized.

37. In its Rome declaration of 2005, FDLR condemned the 1994 genocide and declared its commitment to voluntarily disarm and return to Rwanda, on the condition that the Hutu would be able to participate in politics in their country and that an international follow-up committee would be established to monitor their disarmament and return. Rwanda's reluctance to allow the remaining Hutu refugees to return, arguing that they are all implicated in the 1994 genocide, has caused frustration among the Rwandan Hutu population remaining in the Democratic Republic of the Congo. Indeed, among this population only a relatively small number can be considered to belong to the hardcore *genocidaire* group, while the rest are youth and children too young to be held accountable for the 1994 genocide. However, Rwanda probably fears that anti-Tutsi hatred is being cultivated within the Hutu population.

38. Contrary to accounts by the Government of Rwanda about a positive reception of the Hutu returnees, the FDLR spokesperson pointed out that the Hutu who had returned to Rwanda saw no prospect of economic, social and political integration and were seeking renewed exile in the Democratic Republic of the Congo. In the light of the above, voluntary disarmament of FDLR is highly unlikely until their concerns about their security, reintegration and freedom to participate in the political process in Rwanda are met. On the other hand, their continual confrontations with CNDP for the control of territory or access to resources justify allegations that FDLR represents a threat to security for the civilians in the eastern Democratic Republic of the Congo and to Rwanda.

39. During January and February 2009, joint Rwandan and Democratic Republic of the Congo forces were operating in the eastern Democratic Republic of the Congo with the purpose of reining in and disarming FDLR by force. This raises the prospect of intensified violence in the region, and scores of civilians were reportedly killed or displaced. The pullout of the Rwandan Defence Force at the end of February has re-kindled fears of reprisal attacks by FDLR, which reportedly has retained much of its strength in the area.

Mayi-Mayi

40. The Mayi-Mayi are civilian defence forces active in the Kivus and the Katanga region of the Democratic Republic of the Congo. They consist of loose associations of local Hutu, Nande and Hunde militias, which fight against any occupying force,

including Rwandan forces and their Congolese allies. Other than fighting the "Tutsi domination", they have no obvious clear objective and frequently shift alliances. The Mayi-Mayi/Coalition des patriotes resistants congolais (PARECO) group is said to receive weapons from the Armed Forces of the Democratic Republic of the Congo in return for support in operations against CNDP. Strong evidence also indicates their involvement in violations of human rights and humanitarian law (for instance in Bukombo from September 2007 to May 2008). Because of the lack of homogeneity and an organized structure, it proved impossible for the Special Adviser to organize meetings with any of their leaders. In January 2009, a number of Mayi-Mayi leaders were said to be willing to cease hostilities and to support the Armed Forces of the Democratic Republic of the Congo in military actions to dislodge FDLR.

E. Existence of political or economic motivations for leading actors in North Kivu to encourage divisions between ethnic groups

41. The Democratic Republic of the Congo is known for its rich natural resources, including in the eastern part of the country. North Kivu is rich in minerals such as coltan, gold and tin ore (cassiterite). Many local and international businesses, local officials, armed groups and neighbouring countries (including Rwanda and Uganda),[6] have vested interests in the region and benefit from the vacuum in State power and the illicit exploitation of resources. Virtually all of the interlocutors of the Special Adviser considered this illicit exploitation as one of the main causes of the current crisis in North Kivu.

42. Illegal exploitation of resources clearly plays a role in the fomentation of ethnic hatred in North Kivu, since elements that are perceived as associated to specific ethnic groups are involved in this illicit trade. It has been reported, for instance, that CNDP engaged with Rwanda in the trade of coltan[5] (even though Rwanda denies it), while elements of the Armed Forces of the Democratic Republic of the Congo, FDLR and the Mayi-Mayi illegally exploit the mines in their respective territories. Government officials and others benefit personally from the related corruption, or use militias to guard the mines, revenues sustain the militias and the arms trade in the region, and the conflict for territory and power continues. Indeed, some of the protagonists in the conflict in North Kivu are able to benefit from these resources only because of the conflict and instability.

43. These economic interests have a clear link to other issues in the area, such as land rights, the voluntary repatriation of refugees and the return to their homes of internally displaced persons, political representation of all groups and power sharing.

44. In such a context, affiliations are simplistically reduced to ethnic belonging: the popular perception is that some ethnic groups profit illegally and to the detriment of the Congolese people. The Tutsi, in particular, are not only suspected of disproportionate exploitation of natural resources but, given the perception that they are "foreigners", are also accused of being foreign occupiers who are illegally exploiting the resources of the Democratic Republic of the Congo.

[6] Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2003/1027).

F. Occurrence of human rights violations that can be possible elements of the crime of genocide

45. The Special Adviser has received many reports from sources in the United Nations and non-governmental organizations of serious human rights violations against civilians in North Kivu that have occurred over the last one year alone, including killings, rapes and displacement of the population. The Special Adviser has sought to ascertain whether these acts may have been targeting individuals specifically because of their ethnicity.

46. In some instances, this appears to have been the case. For example, the Special Adviser was informed that on 16 and 17 January 2008 in Kalonge, in the territory of Masisi, an attack was allegedly committed by CNDP forces against Hutu civilians, killing 30 persons.

47. However, many attacks and violations, including widespread rape, appear to be motivated by factors other than ethnicity and to have been perpetrated indiscriminately. For example, PARECO militias were reported to have attacked the Bukombo *groupement* in Rutshuru territory and killed 51 civilians and raped three women, including a child, between September 2007 and May 2008. During the same period and in the same area, CNDP allegedly killed 127 civilians. More recently, on 4 and 5 November 2008, in Kiwanja, Rutshuru territory, CNDP elements under the command of Bosco Ntaganda, allegedly killed 64 persons. The Armed Forces of the Democratic Republic of the Congo were also reported to have committed killings and rapes against civilians across North Kivu, for example in Kanyabayonga on 10 and 11 November 2008. It is widely acknowledged that rape destroys the social fabric of communities and erodes the basis on which ethnic reconciliation can be built.

G. Reason to believe that there may be an intent to destroy in whole or in part an ethnic group

48. Many human rights and humanitarian law violations appear to have been committed mainly as retaliation against civilians believed to be affiliated to enemy armed groups and upon withdrawal of an armed group from an occupied territory or from a battle line, irrespective, apparently, of ethnic affiliations. At the same time, the fact that a direct ethnic link could not be established at the time of the mission does not mean that such a link did not exist or could not be created in the near future. Killing parts of an ethnic group, thereby preventing future support for the enemy, is often linked with genocidal intent. In the context of the recent escalation of the crisis and based on the widespread ethnic hatred, therefore, the Special Adviser recognizes that the risk of ethnic targeting in North Kivu presently exists. More specifically, the likelihood of ethnically motivated killings by armed groups and the escalation of genocidal hysteria among the civilian population, especially against the Tutsi community, cannot and must not be excluded.

49. Furthermore, the Special Adviser was informed that hatred, in particular against the Tutsi, is expressed, sometimes publicly, by representatives of other ethnic groups and leaders of armed groups, as well as in the broadcasts of some local radios and on websites. More specifically, in such instances, the Tutsi are said to be portrayed as foreign occupiers and illegal exploiters of the national resources

of the Democratic Republic of the Congo; these may also contain an incitement to expel the Tutsi from the country. The Special Adviser does not exclude the possibility that different actors in the conflict could easily manipulate ethnic hatred towards an intent to destroy a specific ethnic group, whether Tutsi or another group, if the root causes of the crisis are not appropriately addressed in the near future.

H. Moments of vulnerability

50. During the mission, different interlocutors of the Special Adviser referred to the pending local elections, planned for mid-2009, as a potential trigger of renewed conflict. The outcome of the elections in North Kivu, if successfully carried out, could stabilize the political and security situation in the region; continued postponement might also heighten tensions, as officials currently serving have been appointed by the central Government.

VI. Conclusions

51. The Special Adviser is deeply concerned about the situation in North Kivu, which has implications for the whole subregion. In his opinion, unless the genuine concerns for political and security issues and the sharing of the resources of the region are addressed, the situation is unlikely to improve.

52. The Special Adviser is deeply concerned about the grave human rights and humanitarian situation that continues to unfold in the eastern Democratic Republic of the Congo. He would like to draw special attention to the recommendations made by the United Nations system, including the Secretary-General, the United Nations High Commissioner for Human Rights, experts and mediators, over the past several years, which, had they been implemented, would have forestalled the current crisis, including the risk of genocidal violence.

53. The Special Adviser is concerned that previous efforts at regional peacemaking, including with a view to preventing precisely the kinds of problems referred to in the present report (risk of genocide, illicit exploitation of natural resources, proliferation of armed groups, etc.), in particular the International Conference on the Great Lakes Region, appear to have been inadequate in addressing the crisis comprehensively, both nationally and regionally.

54. Although credible allegations of crimes and egregious violations of human rights and humanitarian norms have been made, the Special Adviser did not receive any credible information indicating a specific "intent to destroy in whole or in part" an ethnic or any other identity-related group. However, this kind of thorough investigation is not within his mandate and is a complicated legal and judicial process that is often only decisively determined after an instance of genocide has occurred and only by competent judicial bodies. The Special Adviser has reached the conclusion that hatred and stigmatization based on ethnicity are widespread in North Kivu.

55. Extreme ethnic polarization and hatred have become associated with the conflict in the Democratic Republic of the Congo, the root causes of which are primarily political and economic and not necessarily identity-related. However, the Special Adviser recognizes that the risk of ethnic targeting in North Kivu is

significantly pronounced above other underlying causes. References to genocide having occurred in the past or going on at present, are powerfully used as a pretext for arguing that genocide may again occur in the future, in particular against the Tutsi community, which is popularly perceived as perpetrating genocidal atrocities against the other ethnic groups. The likelihood of ethnically motivated killings by armed groups and the escalation of genocidal hysteria among the civilian populations are factors that must be taken seriously and addressed in earnest. The risk of genocide in the region is significant, thus immediate action by States in the region and the international community is imperative.

56. The Special Adviser has found a tendency on the part of the authorities of the Democratic Republic of the Congo to favour a military solution, in part by feeling "supported" by the presence of MONUC, whose presence in the protection of the civilian population is essential. This, however, may not serve the overriding goal of peace and security in the long term.

VII. Recommendations

57. The preventive action needed to respond to the situation in North Kivu focuses on four interrelated priority areas: (a) the protection of populations at risk against massive violations of human rights or humanitarian law; (b) accountability for violations; (c) humanitarian relief and access to economic, social and cultural rights; and (d) the initiation and support of steps to address underlying causes of conflict through peace agreements and transition processes. The United Nations system and its operational departments and organizations need to consider the above in designing their own strategies to address the risk of genocide and related atrocities.

58. From the very specific focus of his mandate, the Special Adviser makes the following recommendations:

Security and peace

(a) Calls on belligerents in the eastern Democratic Republic of the Congo to respect international humanitarian law and the safety of civilians should continue to be made;

(b) The capacity of the United Nations to protect civilians in situations of armed conflict, including the eastern Democratic Republic of the Congo, should continue to be enhanced;

(c) The Governments concerned should be urged to facilitate contingency planning for the protection of civilians and displaced persons in the event of intensified hostilities;

(d) All Governments should be called upon to cease immediately all assistance to illegal armed groups, including military and financial support;

(e) The process of voluntary disarmament and demobilization of all armed groups should be encouraged, as provided for in the mandate of MONUC;

Human rights and the rule of law

(f) All parties implicated in the conflict in North Kivu should be urged to end all killings, rapes, forced recruitment of children, forced displacement and other

violations of human rights and humanitarian law, whether or not they are ethnically motivated;

(g) All concerned Governments should be urged to cooperate in bringing to justice those accused of committing genocide and other crimes and mass atrocities;

(h) The role of the International Criminal Court and its commitment to fighting impunity, investigating allegations of international crimes and holding perpetrators accountable should be supported;

(i) Efforts to help the authorities of the Democratic Republic of the Congo to combat ethnic discrimination in line, inter alia, with the 2007 recommendations of the Committee on the Elimination of Racial Discrimination, should be enhanced; ethnic reconciliation in North Kivu should continue to be promoted; and ethnic reconciliation could be included in the United Nations programme of civic and electoral education, in view of the pending local elections;

(j) Tolerance, raising awareness of the risk of genocide and human rights education among all ethnic groups should be encouraged;

(k) Adequate representation and participation in political processes of all members of ethnic groups should be encouraged, including the displaced (internally displaced and refugees), not only in the Democratic Republic of the Congo but in the subregion as a whole; this could help stifle political manipulation of ethnic cleavages by armed groups;

(l) The authorities of the Democratic Republic of the Congo and other parties to the conflict should be urged to end spreading ethnic hatred and intolerance, including by taking measures to suspend radio programmes that are spreading hate messages and bringing to justice those responsible for inciting genocidal violence;

(m) The establishment of the National Human Rights Commission without further delay should be urged;

(n) The Government should be urged to take all necessary steps to strengthen the rule of law and combat impunity, in line with relevant pertinent recommendations made by the Special Rapporteur on the independence of judges and lawyers;

(o) The Government should be urged to develop appropriate mechanisms for transitional justice;

Political and economic sectors

(p) The Government of the Democratic Republic of the Congo should be urged to put in place an effective regulatory framework with regard to the use of natural resources and to effectively participate in relevant accountability mechanisms established to monitor the flow of revenues from extractive industries;

(q) The Democratic Republic of the Congo, other countries in the region and development partners should be supported to work together to restructure economic relations, in a manner that would benefit local governments and communities;

(r) The Democratic Republic of the Congo and its neighbours (in particular Rwanda and Burundi) should be supported to work together towards ethnic

reconciliation at the regional level, taking into account the wounds inflicted by the 1994 genocide in Rwanda and its aftermath, which remain to be healed;

(s) Work towards the identification of solutions to the issues of land rights, political representation and the voluntary repatriation of refugees at the regional level should be continued;

(t) Political solutions should continue to be prioritized, by maintaining high-profile support for the mediation efforts currently being undertaken by Special Envoys Obasanjo, Mkapa and others;

(u) Regional integration encompassing the Democratic Republic of the Congo, Rwanda, Uganda and other countries in the region, which would allow the free movement of trade and people, should be supported; this could build on the existing arrangements of the Southern African Development Community, the Common Market for Eastern and Southern Africa and others which, if fully developed, would ensure continued, but legal, access by foreign business to the mineral and logging resources of the Democratic Republic of the Congo, with resultant royalties and taxes to the benefit of the Government and people of the Democratic Republic of the Congo;

(v) The work of the International Conference on the Great Lakes Region should be enhanced and the obligations that Member States have undertaken, specifically with regard to the Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination (article 8 of the Pact on Security, Stability and Development in the Great Lakes Region), should be recalled;

General

(w) It should be ensured that the approaches, objectives and strategies employed by the special envoys, representatives and other mediators playing a role in the peace process are unified, so that they do not inadvertently undermine each other;

(x) Vigilance and preparedness to act to stop immediately any genocidal incidents should be maintained.

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* In addition, the Special Adviser received confidential information from various sources, which is not reflected in the present list.

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